SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1115

In the Matter of the Petition of ROBERT M. LALLI,

Appellant,

to compel ROSAMOND LALLI, as Administratrix of the Estate of MARIO LALLI, Deceased,

Appellee,

to render and settle her account as Administratrix.

LOUIS J. LEFKOWITZ, Attorney General of the State of New York as Intervenor on behalf of the constitutionality of EPTL 4-1.2(a),

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF OF THE APPELLEE, NEW YORK STATE ATTORNEY GENERAL

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relation to the illegitimate child. In every case this would reduce the distributive share of any legitimate children. It would defeat, entirely, the succession rights of parents and siblings of the intestate parent.

As a further practical consideration neither the Bennett Commission, nor the Legislature, could make the presumption that putative fathers desired such children to inherit from them to the same degree as legitimate children.

The putative father may never even have been aware of the existence of the illegitimate child. If so aware, he may be totally disinterested because of the lack of familial ties with the child. Most often the putative father is made aware of the illegitimate child as an unwilling participant in a paternity proceeding.

The prime objective of the Bennett Commission was to liberalize, as practically as possible, the rights of illegitimates to inherit from their putative fathers. In so far as the procedural problems, discussed *infra,* were concerned an "order of filiation" was a duly recorded event on record with the court and available to all personal representatives of a deceased putative father.

Furthermore, the practical considerations were not as pressing to the Bennett Commission as the procedural problems.

If an illegitimate is made an unconditional distributee in intestacy he must be served with process in the estate of his parent or if he is a distributee in the estate of the kindred of a parent, yet not named a beneficiary, or, in probating the will of any person who makes a class disposition to "issue" of such parents, the illegitimate must be served with process. (New York Surrogate's Court Procedure Act § 1403). The complexities of citing and serving an illegitimate of whose existence neither family nor personal representative are aware could be insurmountable.

Of greatest concern is how does a New York Court achieve finality of decree of "any" estate when the possibility exists, however remote, that an illegitimate child may be alive. Finality in decrees is essential in the Surrogate's Courts due to the passage of title to real property under such decrees and the great number of intestate estates passing through the New York courts. New York procedural statutes and the due process clause mandate notice and opportunity to be heard to all necessary parties. If illegitimates are given the right to intestate succession *all* illegitimates would have to be served with process. This does not create a real problem where "known" illegitimates are involved, but, it presents the utmost burdens as regards "unknown" illegitimates. The Bennett Commission felt that this procedural problem might affect a majority of New York estates. See: *Matter of Flemm,* 85 Misc. 2d 855 (Surr. Ct. Kings Co. 1975).

The statute in question, by requiring as an absolute, a judicial "order of filiation" permits the illegitimate to inherit from his "unwilling" father. Paternity proceedings are invariably instituted only when the putative father is unwilling to recognize or support the child.

There are, however, many "willing" fathers who acknowledge and support the child without the necessity of compulsory judicial orders.

As Surrogate Sobel stated in *Matter of Flemm,* 85 Msc. 2d 864:

> "It seems therefore anomalous that the statute permits inheritence from the 'unwilling' father but not from the 'willing' father. Many states recognize such public holding out, acknowledgements in writing and furnishing of support as proof of paternity entitling the illegitimate to inherit. To recognize such proof however, invites postmortem litigation, i.e. assertions of paternity after putative father is dead and when he is not available to counter such proof."

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BRIEF OF THE APPELLEE, NEW YORK STATE ATTORNEY GENERAL

Opinions Below

The opinion of the Court of Appeals on reconsideration ordered by this Court, *Matter of Lalli,* 431 U.S. 911, is reported at 43 N Y 2d 65, 400 NYS 2d 761, 371 NE 2d 481. The prior opinion of the Court of Appeals is reported at 38 N Y 2d 77, 378 NYS 2d 351, 340 NE 2d 721.

The opinion of the Surrogate's Court of Westchester County is not reported.

Jurisdiction

The jurisdiction of this Court to hear this appeal is conferred by Title 28, United States Code, § 1257(2). This Court noted probable jurisdiction on March 20, 1978.

Statute Involved

Estates, Powers and Trusts Law § 4-1.2(a) 17B McKinney's Consolidated Laws of New York, 531-531 is reproduced at page 3 of appellant's brief.

While subdivision (b) is also reproduced at page 3 of appellant's brief, such subdivision is not now before this Court in that subdivision (b) has nothing to do with the factual situation at bar or the nature of the claim made by the appellant.

Question Presented

Does EPTL § 4-1.2(a) meet the Constitutional requirements as defined by this Court?

The Attorney General of the State of New York respectfully submits that the statute is constitutional as found on two occasions by the New York Court of Appeals and further that the statute is rationally intended to protect the interests of all the citizens of New York with regard to descent and distribution.

Statement of the Case

The appellant seeks to declare unconstitutional a section of the Estates, Powers & Trusts Law of the State of New York, i.e., § 4-1.2(a). An application had been made by the

appellant, Robert M. Lalli, in the Surrogate's Court of Westchester County for a compulsory accounting by the administrator of the estate of Mario Lalli. Robert M. Lalli claimed to be an illegitimate offspring of Mario Lalli and therefore claimed to be a distributee of Mario's estate.

The Surrogate's Court, Westchester County, dismissed the application on the ground that under the Estates, Powers & Trusts Law, § 4-1.2(a), the appellant was not a distributee.

The Court of Appeals of the State of New York on two separate occasions reviewed the constitutionality of the statute at bar and found on each occasion that the statute was constitutional. The second review was made following a remand by this Court. While the Attorney General of the State of New York was not a party to the original determination in the Surrogate's Court, Westchester County, or the Court of Appeals of the State of New York when it first heard the case, the Attorney General of the State of New York was permitted to intervene as a party by the New York State Court of Appeals following this Court's remand and the Attorney General participated in the proceedings before the Court of Appeals on the remand.

For the purpose of this appeal there are no factual disputes. The appellant at no time was ever judicially determined to be the son of Mario Lalli. There was no judicial proceeding for such a determination and no order of filiation was ever entered.

In this regard it should be noted that Robert M. Lalli, the appellant, was born on August 24, 1948. The decedent, Mario Lalli, died on January 7, 1974. At no time prior to Mario Lalli's death did Robert M. Lalli attempt to have himself judicially declared to be the son of Mario Lalli.

The Attorney General of the State of New York does not concede that Robert M. Lalli is in fact the son of Mario Lalli, nor does the Attorney General of the State of

New York concede that there was a formal acknowledgement by the decedent for the purposes of establishing kinship and rights of distribution that Robert M. Lalli was his son.

Apparently, Mario Lalli did execute a form during his lifetime giving his permission for Robert M. Lalli to marry at a time when Robert M. Lalli was in law an infant and his natural mother was already dead and could not execute a consent. What the intentions of Mario Lalli in signing this form were are only speculative. To consider the execution of this form an acknowledgement of paternity is to speculate beyond rational comprehension.

But it is clear that the execution of this form giving permission for Robert M. Lalli to marry is neither relevant nor dispositive of the true and simple issue involved in this case.

EPTL § 4-1.2(a) requires that an order of filiation be obtained during the lifetime of the putative father. This was not done in the case at bar. The only question now presented to this Court is whether this Court should hold such a rational requirement of the New York State Legislature to be unconstitutional.

It should be noted that the statutory requirement that the order of filiation be obtained within two years from the birth of the child is not under consideration since there was no attempt to obtain an order of filiation during the putative father's lifetime and further because the New York courts have not applied the two-year provision of the statute and have held that as long as the order of filiation is obtained during the lifetime of the alleged putative father, it is sufficient. Examples of this type of judicial modification can be found in such cases as: *Matter of Thomas,* 87 Misc. 2d 1033 (Surr. Ct. N.Y. Co. 1976); *Matter of Flemm,* 85 Misc. 2d 855 (Surr. Ct. Kings Co. 1975).

POINT I

This Court in *Labine* v. *Vincent,* 401 U.S. 532, left each state free to impose statutory restrictions, strict or liberal, on the rights of illegitimates to inherit, thus disposing of inquiry by the courts as to the constitutionality of these statutes and the determination in *Trimble* v. *Gordon,* 430 U.S. 762, does not mandate EPTL 4-1.2 to be unconstitutional.

This Court in *Labine* v. *Vincent,* 401 U.S. 532 (1971) left each state free to impose statutory restrictions, strict or liberal, on the rights of illegitimates to inherit, thus disposing of inquiry by the courts as to the constitutionality of these statutes.

In *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961) Mr. Chief Justice Warren stated that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it," and in *McDonald* v. *Board of Education,* 394 U.S. 802, 809 (1969) Mr. Chief Justice Warren further stated that "[l]egislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent and their statutory classifications will be set aside only if no grounds can be conceived to justify them".

EPTL § 4-1.2 was enacted into law by the N.Y. Legislature effective September 1, 1966. This statutory choice was made by the legislature on the recommendation of the Bennett Commission on Estates (Fourth Report [1965] pp. 233-271).

In 1971 this Court, speaking through Justice Black, said that "The Federal Constitution does not give this Court the power to overturn the State's choice [of rules for intestate succession] under the guise of constitutional interpretation because the Justices of this Court believe they

can provide better rules. *Labine, supra,* 401 U.S. 532, 537. *Trimble* v. *Gordon,* 430 U.S. 762 (1977), however, now demands "more than the mere incantation of a proper state purpose". 430 U.S. 769. In short, the constitutional analysis of the statute must be complete.

In view of the recent adoption by this Court of a three tier analytical review of alleged equal protection violations as demonstrated in *Trimble supra,* the New York statute stands alone and not in juxtaposition to any other state statutes. The statute at bar is grounded in practical and procedural considerations rising well above the standards now mandated by this Court under the "minimal scrutiny" test or that middle ground between rational basis and compelling state interest.

New York's Estates, Powers and Trusts Law, Section 4-1.2, subdivision a, paragraph 2 (hereinafter EPTL § 4-1.2, subd. [a], par. [2]) affords an illegitimate child the right to inherit from his putative father simply on furnishing proof that a court of competent jurisdiction has made an order of filiation declaring paternity made during the lifetime of the father.*

A careful review of the eleven cases prior to *Trimble,* see 430 U.S. 766 fn. 11, illustrates that the New York statute does not deprive illegitimates in the manner proscribed by this Court.

The statute before this Court does not confer or deny any specific rights to or from illegitimate children that legitimate children have. Cf. *Matthews* v. *Lucas,* 427 U.S.

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* The New York Court of Appeals did not reach the question or consider the challenge to the separate clause of the statute which requires that the paternity proceeding have been instituted "during the pregnancy of the mother or within two years from the birth of the child." (EPTL 4-1.2, subd. [a], par. [2]; 38 NY 2d 80 fn.) and since no attempt was made to obtain an order of filiation during the lifetime of the father, such provision is not now before this Court.

495 (1976) (Social Security Benefits); *Gomez* v. *Perez,* 409 U.S. 535 (1973) (support payments); *Weber* v. *Aetna Casualty & Surety Co.,* 406 U.S. 164 (1972) (Workmen's Compensation Benefits); *Griffin* v. *Richardson,* 346 F. Supp. 1226 (D.C. Md.), summarily aff'd, 409 U.S. 1069 (1972) (Social Security Insurance Benefits); *Levy* v. *Louisiana,* 391 U.S. 68 (1968) (wrongful death actions).

The New York Statute does not contain unequal discriminations between any classes of illegitimates. Cf. *Jimenez* v. *Weinberger,* 417 U.S. 628 (1974) (Social Security Benefits: pre & post death illegitimates); *Beaty* v. *Weinberger,* 478 F. 2d 300 (CA 5 1973), summarily aff'd, 418 U.S. 901 (1974) (Social Security disability payments pre and post disability illegitimates).

There are no insurmountable burdens in complying with the New York Statute and the legislative intent, discussed *infra,* emanates from a careful analysis of practical and procedural problems of intestate succession. *Labine* v. *Vincent,* 401 U.S. 532, *supra* (intestate succession).

EPTL § 4-1.2, subd. [a], par. [2] requires only a court order of filiation during the lifetime of the father. Cf. *Trimble* v. *Gordon,* 430 U.S. 762 (1977) (intestate succession—filiation and marriage); *Matthews* v. *Lucas,* 427 U.S. 495 (1976) (Social Security insurance benefits—proof of dependency, etc.).

In reviewing the legislative history of the statute it is apparent that the New York statutory differentiation on the basis of illegitimacy is justified by the promotion of recognized state objectives. The Bennett Commission, all experienced Surrogates, estate practitioners and legislators, emphasized two major areas of concern; one practical and one procedural.

As a practical matter permitting an illegitimate child to unconditionally inherit from a parent can cut down the distributive share of a lawful surviving spouse having no

The Bennett Commission gave serious consideration to this problem and wrote:

> "The utmost caution should be exercised to protect innocent men from unjust accusation in paternity claims. To avoid such hazard no informal method of acknowledgement has been provided for in the recommendations. * * * The procedure in other states provided merely that any informal witnessed writing establishing the relationship of father and child between the deceased and the claimant is sufficient to establish paternity, allows paternity to be established after the death of the father, thus affording considerable opportunity for falsification of evidence and inviting harassing litigation." (pp. 266-267)

The Bennett Commission and resulting legislation has balanced the practical and procedural problems heretofore delineated and the unwanted threat of postmortem strike suits against the possibility of occasional injustice resulting to illegitimates.

Based on experience the members concluded that the "willing" father has numerous avenues under New York Law to care for the child and it may be presumed that if he did not during his lifetime then he did not desire the child to inherit from him.

The "unwilling" father's rights are protected by a court proceeding and the most minimal burden is placed upon the child.

The New York statute does not focus on legitimizing the family relationship by requiring a marriage. The Illinois statute before this Court in *Trimble, supra,* was significantly more burdensome, discussed *infra.* The New York statute is the most practical solution to a multi-faceted problem.

The practical and procedural problems discussed herein have been enmeshed into forthright legislation which

neither has the intention of visiting the sins of the parent on the child, nor, unequally depriving the illegitimate child to an extent which would render it unconstitutional.

EPTL § 4-1.2, subd. [a], par. [2] requires proof of paternity by judicial determination made during the lifetime of the father. This is not foreclosed by this Court's decision in *Trimble* v. *Gordon, supra,* nor is it proscribed by this Court through footnote 14 in *Trimble, supra,* 430 U.S. 722.

The determination of this Court in *Trimble* v. *Gordon,* 430 U.S. 762 (1977) does not mandate EPTL 4-1.2 to be unconstitutional.

It is readily apparent that the Illinois statute declared unconstitutional by this Court and EPTL 4-1.2 previously held constitutional by the Court of Appeals are in no way similar. The Illinois statute, § 12 of the Illinois Probate Act, made no provision whatsoever for an illegitimate to inherit from its natural father except under the very limited circumstances of where the natural parents intermarry and where the natural father then acknowledges his parentage of the child. On the other hand, the statute provided that an illegitimate child could inherit from its natural mother.

This Illinois statute did not concern itself with proof of parentage but rather provided for inheritance only from the mother without considering whether an illegitimate child was in fact a natural child of the father and whether such fact could be established.

EPTL 4-1.2 on the other hand makes no distinction with regard to the right of inheritance of an illegitimate child from its natural mother or father.

EPTL 4-1.2 does not limit the right of a child to inherit from its natural father and allows that right to exist side by side with the right to inherit from the natural mother.

The distinction in EPTL 4-1.2 does not deal with the right to inherit but only with the manner in which the parentage itself is established.

There are obvious physiological differences which create by their very nature certain problems in determining whether any given man is the father of a child as opposed to some other man.

This Court in deciding *Trimble, supra,* recognized this fact and acknowledged that "The more serious problems of proving paternity might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mothers' estates or for legitimate children generally." 430 U.S. 770. It was this very difficulty which this Court recognized as requiring a more demanding standard for illegitimate children claiming under their fathers' estates which the New York State Legislature in passing EPTL 4-1.2 considered. The result of the legislators' consideration was the statutory requirement that there there be a judicial determination of paternity during the lifetime of the alleged illegitimate's father.

Certainly it is not beyond the scope of legislative province to require a judicial finding of parentage with regard to an alleged putative father during his lifetime so that he might reasonably have an opportunity to contravene the contention of parentage.

This reasonable requirement represents a legitimate legislative purpose to avoid the perpetration of fraud on the People of this state with regard to the disposition of property passing intestate.

The New York Court of Appeals in deciding this case recognized the legitimate purpose of EPTL 4-1.2 and the fact that this statute did not discriminate or violate the equal protection provisions of either the New York State Constitution or the Constitution of the United States.

It appears irrefutably that the New York statute in question and the courts of New York have given adequate consideration to the statute's proper objective of assuring

accuracy and efficiency in the disposition of property at death, something which apparently was not done by either the Legislature or courts of the state of Illinois and that the New York statute is, as required by the Supreme Court of the United States, "carefully tuned to alternative considerations."

In this regard it is important to note that had the appellant in the *Trimble* case, *supra,* been a resident of the State of New York and had she made her claim under the New York statute now before this Court, she would have been successful in establishing her right to inherit. The illegitimate had, in Illinois, obtained an order of the Illinois court during the putative father's lifetime determining paternity and determining which putative father was indeed the father of the illegitimate.

Such an order under EPTL 4-1.2 would have allowed the illegitimate to inherit from her father since no distinction is made in New York between the right of an illegitimate to inherit from either its mother or father once the paternity of the father is established in a judicial proceeding.

Under the Illinois statute which this Court declared unconstitutional, the illegitimate, although judicially determined to be the natural daughter of the putative father, was not entitled to inherit since an illegitimate under Illinois law could only inherit from its natural mother except in one specific case which required two affirmative acts on the natural father's part. The Attorney General is mindful of the fact that in the case at bar the alleged putative father executed a consent for the illegitimate, who was then under age, to marry and that consent might be construed as an acknowledgment of paternity. The Attorney General is also not unmindful of footnote 14 in the decision of this Court in *Trimble* v. *Gordon, supra.*

However, a careful reading of the entire opinion in the *Trimble* case, *supra,* does not support any conclusion that

a State in the exercise of its right to control the distribution of property by inheritance cannot require a judicial proceeding as the only basis for establishing paternity of an alleged father provided, of course, that once such putative father is so established there is no discrimination with regard to the right to inherit from either the natural mother or father.

Of course, if a State were to so choose, it could accept a "formal acknowledgement of paternity" as a basis for establishing paternity in the case of an illegitimate. However, there has not nor can there be any constitutional mandate which would *require* a State to accept such a formal acknowledgment as a basis for establishing paternity for the purpose of determining a right to inherit. One may acknowledge paternity for many reasons without regard to any consideration of inheritance rights. In the case at bar, for example, the document giving consent for the alleged illegitimate child to marry may have been executed purely for convenience purposes since the child's natural mother was dead and no one else was available to give the consent necessary but it is not the acknowledgment of paternity required.

The Legislature of the State of New York has determined that for inheritance purposes, a judicial proceeding to determine paternity be required and such a determination by the Legislature is reasonable and consistent with their legislative function to protect the interests of the citizens of New York.

Otherwise stated, so long as the legislative requirement with regard to proof is a reasonable one and so long as once the requirements of proof are made there is no discrimination between inheritance from a natural mother or natural father, the statute which provides for the standard of proof must be deemed constitutional.

The determination in *Trimble* v. *Gordon, supra,* must be read as limited on its facts to the peculiar statute in

Illinois declared unconstitutional. Since the Illinois statute bears no relationship to the New York statute which clearly provides a constitutional framework with regard to inheritance by illegitimates, the determination by this Court in the *Trimble* case, *supra,* should not affect the holding of the Court of Appeals in the case at bar.

The New York statute, at the time of its enactment, was "carefully tuned to alternative considerations". The New York procedure of proof of paternity is "tailored to eliminate imprecise and unduly burdensome methods of establishing paternity". New York's concern is not only for the fact of paternity but the form and manner of its proof. As to the claim that the New York statute creates an insurmountable burden on the child, this argument is fallacious. See Amicus Brief, pp. 16-18.

> "In effect our statute requires that the determination of paternity be made in the formality of a judicial proceeding in consequence of which there will follow an order of filiation and a permanent, accessible record. If a father is prepared to execute a formal acknowledgment of paternity (a prerequisite which appears clearly to be acceptable to the Supreme Court), obtaining an order of filiation will not be burdensome." *Matter of Lalli,* 43 N Y 2d 65, .

The New York statute before this Court does not attempt to influence the actions of men and women by imposing sanctions on their illegitimate children.

However, assuming, *arguendo,* that a sanction is imposed on the children born of illegitimate relationships this Court stated in *Trimble, supra* at 771:

> "The orderely disposition of property at death requires an appropriate legal framework, the structuring of which is a matter particularly within the competence of the individual States. In exercising this responsibility, a State necessarily must enact laws governing

both the procedure and substance of intestate succession. Absent infringement of a constitutional right, the federal courts have no role here, *and, even when constitutional violations are alleged, those courts should accord substantial deference to a State's statutory scheme of inheritance.*" 430 U.S. 771 (emphasis added).

POINT II

EPTL 5-4.5 permits an illegitimate child the right to recoup a portion of the proceeds of a wrongful death action.

EPTL § 5-4.1 confers the right to bring a wrongful death action on behalf of a decedent's estate on the duly appointed personal representative of the estate. EPTL § 5-4.5 permits an illegitimate child the right to recoup a portion of such proceeds in the case where the decedent is a putative father. The theory behind allowing such recoupment is the pecuniary loss to the illegitimate child. EPTL § 5-4.5 became effective July 1, 1975 but did not affect causes of action accruing prior to its effective date. The Appellate Division, Second Department recently held EPTL § 5-4.5 to be retroactive in effect. *Eckel* v. *Hassan,* 61 A D 2d 13 (Second Dept. 1978).

In view of the fact that EPTL § 5-4.1 permits the personal representative to maintain a wrongful death action within two (2) years of the decedent's death and such an action was never brought in the case at bar and the additional fact that EPTL § 5-4.5 permits illegitimates to share in a successful action, that part of appellant's brief addressing this point is moot.

The issue as to whether an illegitimate may share in the proceeds of a wrongful death action was never in this case and is not before the Court.

POINT III

***Amici's* Argument "C" alleging sex discrimination by operation of EPTL § 4-1.2 must be dismissed because no plaintiff has standing to make the instant constitutional challenge.**

Article III of the Constitution limits the jurisdiction of the federal courts to actual cases and controversies. The requirement that plaintiffs have standing is part of that limitation. *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976). In order to establish standing, plaintiff must show "an injury to himself that is likely to be redressed by a favorable decision." *Id.* at 38. *See also, Singleton* v. *Wulff,* 428 U.S. 106, 112 (1976); *O'Shea* v. *Littleton,* 414 U.S. 488 (1974). The allegation of a "hypothetical burden" is not sufficient to create standing. *Socialist Labor Party* v. *Gilligan,* 406 U.S. 583 (1972).

As this Court stated in *Warth* v. *Seldin,* 422 U.S. 490 (1975),

> "Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of a 'a real need to exercise the power of judicial review' or that relief can be framed 'no broader than required by the precise facts to which the court's ruling would be applied.'" *Id.* at 508. (citation omitted).

As previously discussed, *supra,* EPTL § 4-1.2(a) does not deny the natural mother any substantive or procedural benefits granted to the putative father. Cf. *Frontiero* v. *Richardson,* 411 U.S. 677 (1973). Furthermore, EPTL § 4-1.2(a) is an intestate succession law dealing solely with the form and manner of proving paternity. The attenuated argument of *amici* that the natural mother is a stigmitized politically powerless victim of EPTL § 4-1.2 lacks credence and support by the facts of this case. In the case at bar, the natural mother of appellant is deceased. In fact the

natural mother predeceased the appellant's putative father. Cf. *Kahn* v. *Shevin,* 416 U.S. 351 (1973).

If no plaintiffs have standing to bring an action, it must be dismissed for lack of jurisdiction. *Warth* v. *Seldin,* 422 U.S. 490 (1975).

It is respectfully submitted that EPTL § 4-1.2, in no way, discriminates against the natural mother as the natural mother has the very same rights presently afforded the illegitimate child under the statute. The natural mother is not denied access to the courts of New York to prove paternity during the lifetime of the father nor is the illegitimate child. If the man is adjudged the natural father he is held to the same degree of responsibility for the child as the mother. Family Court Act § 513.

The Attorney General of the State of New York makes no excuse for the legislative wisdom EPTL § 4-1.2. This brief does not rely on statistics or generalities, *Craig* v. *Boren,* 429 U.S. 190 (1976), to substantiate the rationale for the right of New York to require a judicial proceeding to prove paternity.

If this Court allows appellant and *amici* to justify their argument by placing EPTL § 4-1.2 in juxtaposition to numerous other state statutes this Court would, in essence, be placed in the awkward position of reviewing every domestic relations statute in New York. EPTL § 4-1.2(a) is the only statute properly before this Court and New York has overriding and compelling interests in securing the familial ties of its citizens and in supervising proceedings (as under EPTL § 4-1.2) which may divest unknowing persons and their relatives of vested property interests.

POINT IV

The judgment should be affirmed.

Respectfully submitted,

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